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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 98 156 51071 Office: VERMONT SERVICE CENTER Date:

AUG 2 2 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a software engineer at [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Computer Science from [redacted] and thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the

United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

In a statement accompanying the initial petition, counsel describes the petitioner's field:

> The ITM department is one of the biggest departments in [redacted] It provides the complete Telecommunication Network Management Solutions, including design, development, installation and configuration and maintenance. The ITM projects provide world class products to varieties of telecommunication customers all over the world, such as U.S., Canada, Mexico, China, Japan, Korea, Belgium, Netherlands, UK, UAE, and Saudi Arabia. This project upgrades the standard of the U.S. telecommunication customers as well as our international customers. It brings huge income to [redacted] and the United States. It helps maintain the U.S. leadership in the global market.

[redacted] Senior Technology Manager, [redacted] states:

> The success of the ITM is based upon its outstanding research group of which [the petitioner] is a major contributor who made a remarkable contribution far exceeding that of his peers. [The petitioner] has exceptionally strong background and

experience in Unix system, ORCLE database system, telecommunication network management and electrical engineering. Utilizing his outstanding expertise, he has achieved major improvement of the system performance, solved difficult issues and worked out a perfect system that proved to be a new technique which notably enhanced the quality of our telecommunication service to our customers on a world wide scale.

[redacted] Professor of Mechanical Engineering, [redacted] states that the work of the petitioner "is vital evidence of his exceptional abilities in the scientific research and his extensive knowledge in mathematical analysis, computer control, data communication and computer hardware & software development."

The petitioner submits letters of recommendation from several witnesses. [redacted] Executive Vice President, [redacted] states that the petitioner "has been a key player in the ITM project and the telecommunication network management area." [redacted] District Manager, [redacted] testifies that in his opinion "the petitioner's work has significant national implications as his work will help to expedite advanced telecommunication technology and data processing techniques at the national level."

[redacted] Senior Member of Technical Staff [redacted] states that the petitioner "is not an ordinary computer engineer," and describes the petitioner as "indispensable to maintain the United States' leading edge in SONET/SDH technologies." [redacted] Senior Technical Manager, [redacted] states that the petitioner "individually developed a new technique to optimize the database query algorithm and significantly improve the TP performance."

[redacted] Technical Manager [redacted] states:

> After he joined this group, he was able to utilize his software and hardware knowledge and experiences to independently perform major portions of this project. He has quickly stood out to be an indispensable part of the team, making major progress in the projects he is involved in.

Mr. [redacted] continues to discuss the overall importance of the petitioner's field, and argues that the petitioner "is the ideal and most qualified person for this role." The scarcity of software engineers in a particular field, however, is not a strong argument for a national interest waiver. An alien seeking immigrant classification as an alien of exceptional ability or as a member of the professions holding an advanced degree cannot meet the threshold for a national interest waiver of the job offer requirement simply by establishing a certain level of training or education which could be articulated on an application for a labor

certification. Matter of New York State Dept. of Transportation, supra.

The director denied the petition, stating that the documentary evidence in the record does not support the assertions of some witnesses that the petitioner's research is especially significant.

The Service does not dispute that the petitioner has made some original contributions to his field. The significance of these contributions, however, has not been shown to be of such magnitude that the national interest would be ill-served by holding the petitioner to the job offer/labor certification requirement which is integral to the classification sought.

Counsel asserts that, in addition to being a member of the professions holding an advanced degree, the petitioner also qualifies as an alien of exceptional ability. No constructive purpose would be served by analyzing this claim, but even accepting the premise that the petitioner is a particularly talented member of the field, a plain reading of the regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement. Assertions to the effect that the petitioner's skills are above average in his field must be accompanied by some explanation as to why the job offer/labor certification process (which normally attaches to the visa classification sought) would be inappropriate. In this case, as noted above, a job offer exists and witnesses have maintained that there are very few experts in the petitioner's narrow specialty. Therefore, the standard procedures appear to be adequate for the prospective employer's needs in this case. The petitioner's intended role at [redacted] appears to be useful in the creation of beneficial computer software, but does not appear to rise above the higher threshold of substantial benefit to the national interest.

On appeal, counsel merely states "[t]he Center's decision is in error because it overlooked the evidence which clearly points out that the beneficiary is working in a field of intrinsic merit, has distinguished himself from the majority of his peers, has made contribution that is national in scope and his deporture [sic] will have an adverse impact on the U.S."

Section 203(b)(2)(A) of the Act indicates that, in order to be classified as an alien of exceptional ability, an alien must be shown to "substantially benefit prospectively . . . the United States." The same statutory provision requires a job offer. Clearly, by statute, "exceptional ability," with its concomitant

substantial prospective benefit to the U.S., is not by itself sufficient cause for a national interest waiver. Therefore, the benefit which the alien presents to the field must significantly exceed the substantial prospective benefit contemplated in section 203(b)(2)(A) of the Act. (To hold otherwise would render the job offer requirement provision moot; its inclusion in the statute demonstrates Congress' intent that the job offer be a standard requirement for this visa classification.) Because the statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professionals than for aliens of exceptional ability, this standard must apply whether the alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree.

Counsel argues that the petitioner's work will benefit the national economy, due to the nature of his intended duties at [redacted] and in the software field in general. These arguments pertain to the industry and the position rather than to the petitioner as an individual in contrast to other qualified members of his specialty.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director denying the petition will not be disturbed.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.